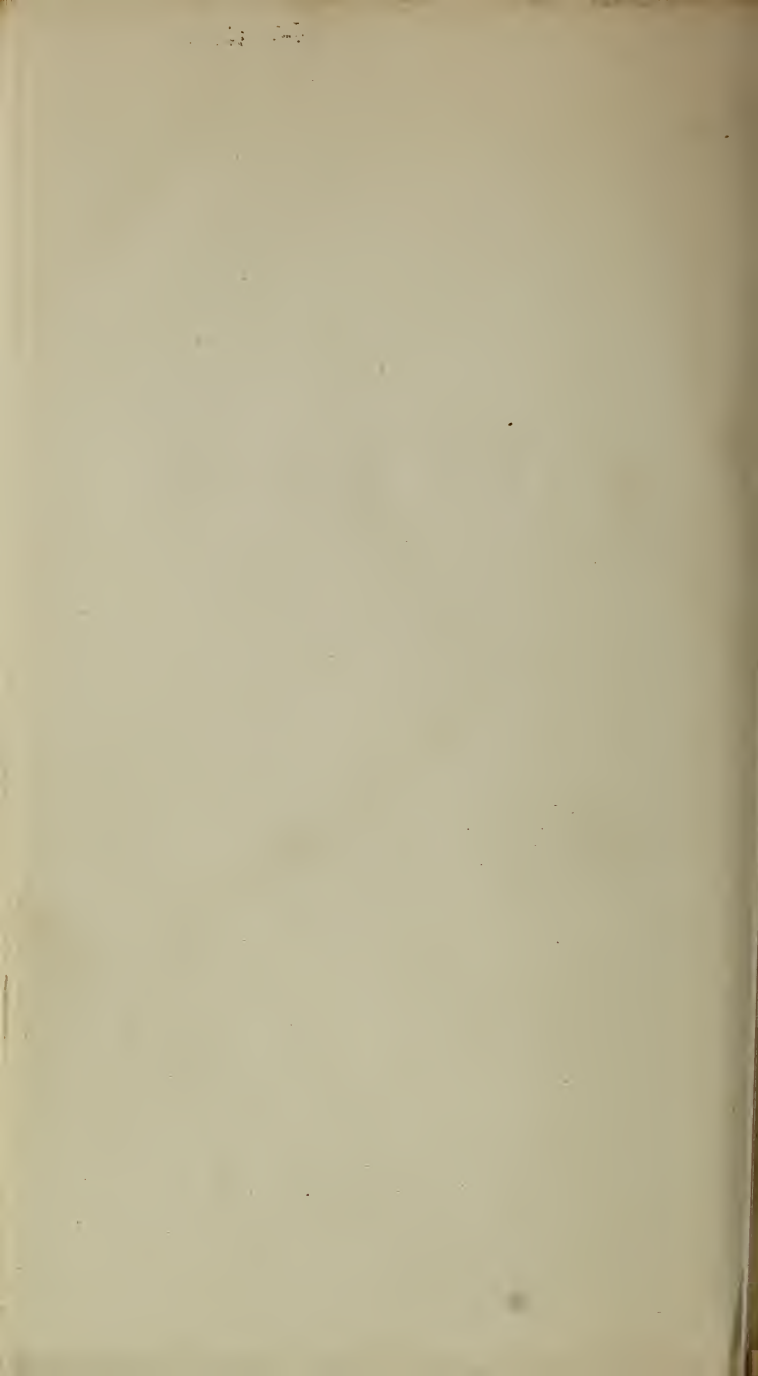


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Circular No. 156

PACKERS AND STOCKYARDS ACT, 1921

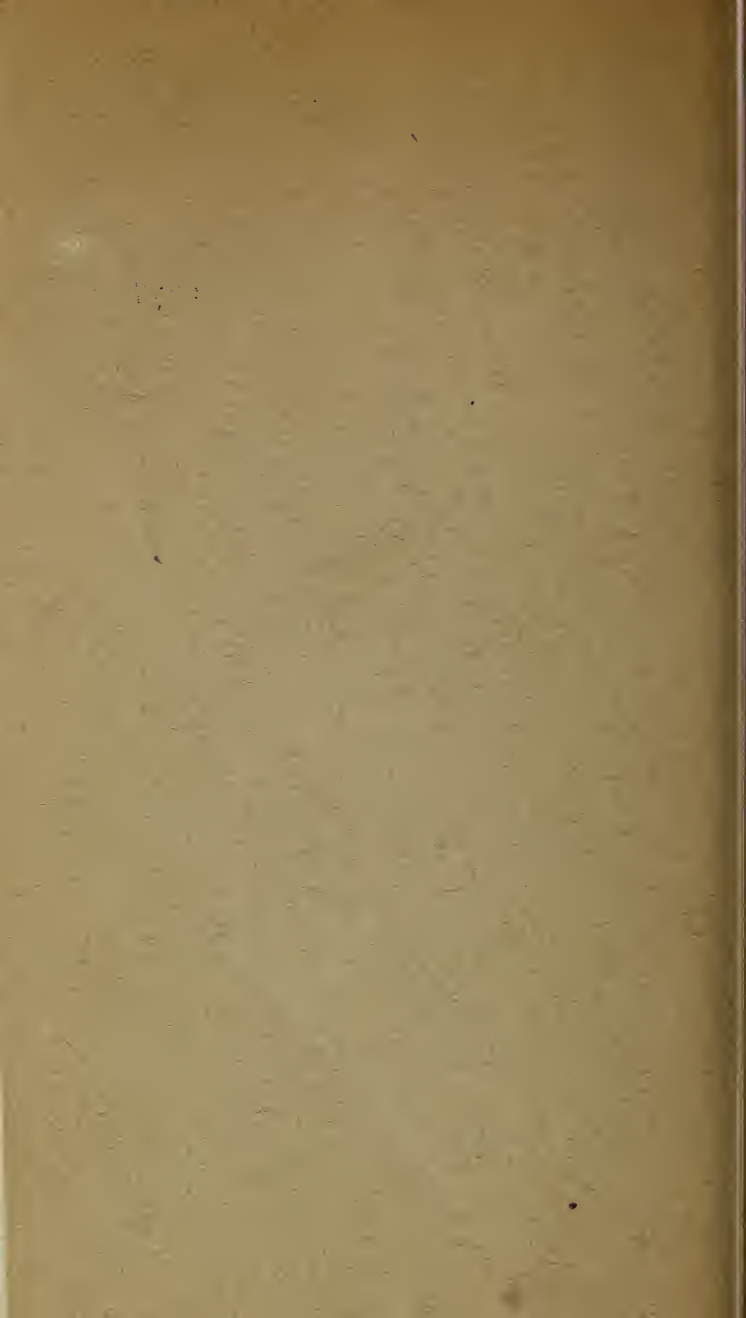
GENERAL RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE WITH RESPECT TO STOCKYARD OWNERS, MARKET AGENCIES AND DEALERS

Issued November 30, 1921

Revised January 1, 1925



WASHINGTON
GOVERNMENT PRINTING OFFICE
1925



REGISTRATION

No.

UNITED STATES DEPARTMENT OF AGRICULTURE
PACKERS AND STOCKYARDS ADMINISTRATION

WASHINGTON, D. C.

HAS REGISTERED WITH THE SECRETARY OF AGRICULTURE UNDER
SECTION 303 OF THE PACKERS AND STOCKYARDS ACT, 1921

AS

AT

DATE

ASSISTANT TO THE SECRETARY

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DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON

By virtue of the authority vested in the Secretary of Agriculture by the Packers and Stockyards Act, 1921, approved August 15, 1921, Public No. 51, 67th Congress, I, Henry C. Wallace, Secretary of Agriculture, do make, prescribe, and give public notice of the rules and regulations hereto annexed, to be in force and effect until amended or superseded under the authority of said act.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 30th day of November, 1921.

HENRY C. WALLACE,
Secretary of Agriculture.

(III)

THE HISTORY OF THE
CITY OF BOSTON
FROM 1630 TO 1800

The history of the city of Boston from 1630 to 1800 is a story of growth and development. It begins with the arrival of the first settlers in 1630, who founded the city as a center of Puritanism. Over the years, the city grew in size and importance, becoming a major port and a center of commerce. The city's history is marked by significant events, including the American Revolution and the founding of the United States. The city's growth was also reflected in its architecture and infrastructure, as it developed into a major urban center. The city's history is a testament to the resilience and spirit of its people, who have built a city that has stood the test of time.

By J. W. Aldrich, Esq.
Author of "The History of the City of Boston"

UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

General Rules and Regulations for carrying out the provisions of the Packers and Stockyards Act, 1921, with respect to stockyard owners, market agencies, and dealers

1. These rules and regulations are made and prescribed with respect to stockyard owners, market agencies, and dealers under the Packers and Stockyards Act, 1921, a copy of which is hereto annexed. These rules and regulations shall apply and be enforced only in accordance with and subject to the provisions of said act, including the definitions of terms therein used. They shall not prevent the legitimate application or enforcement of any valid by-law, rule, regulation, or requirement of any exchange, association, or other organization, or any other valid law, rule, or regulation, to which any stockyard owner, market agency, or dealer shall be subject, which is not inconsistent or in conflict with the act and these rules and regulations. The term "registrant" as used herein means a market agency or dealer subject to Title III of the act.

2. Registration (section 303, Title III) by market agencies and dealers shall be accomplished by properly filling out and delivering to the Packers and Stockyards Administration at Washington, D. C., by

mail or otherwise, a form which will be furnished upon request for the purpose.

3. (a) Each stockyard owner and market agency shall plainly state in the schedule of rates and charges (section 306, Title III) filed by such stockyard owner or market agency the date when effective, the stockyards at which it applies, the name and business address of the stockyard owner or market agency as the case may be, the kind of live stock, the nature of the service, and the terms or conditions under which the service will be rendered.

(b) If the same schedule is to be observed by more than one market agency, one schedule will suffice for all market agencies at any one market observing it whose names and business addresses are shown on it, together with the name of the organization, if any, by which adopted.

(c) Each market agency that is a cooperative association of producers shall expressly so state in its schedule, and shall also plainly state the method of distribution or apportionment of its excess earnings or deficit, if any.

(d) Such further requirements in respect to such schedules shall be observed as shall from time to time be made by the Packers and Stockyards Administration under the direction of the Secretary.

4. Each stockyard owner and registrant shall give to the officer in charge of the Packers and Stockyards Administration or his duly authorized agent, at such time in writing or otherwise, and under oath or affirmation if requested by such officer, any information concerning the business of the stockyard owner or registrant which may be required in order to carry

out the provisions of the act and the rules and regulations thereunder.

5. Each stockyard owner and registrant shall, during ordinary business hours, permit any representative of the Packers and Stockyards Administration designated by the officer in charge thereof to enter the place of business and inspect any or all property in the possession or control and all records pertaining to the business of the stockyard owner or registrant as such, in order to carry out the provisions of the act and the rules and regulations thereunder. Any necessary facilities for such inspection shall be extended to such representative by the stockyard owner or registrant, his agents and employees. Such representative shall be the Secretary's duly authorized agent for the purposes of these regulations.

6. No agent or employee of the United States shall, without the consent of the stockyard owner or registrant concerned, divulge or make known in any manner, except to such other agent or employee of the United States as may be required to have such knowledge in the regular course of his official duties or except in so far as he may be directed by the Secretary or by a court of competent jurisdiction, any facts or information regarding the business of any stockyard owner or registrant which may come to the knowledge of such agent or employee through any examination or inspection of the business or accounts of the stockyard owner or registrant or through any information given by the stockyard owner or registrant pursuant to these rules and regulations.

7. Each stockyard owner shall furnish to the Packers and Stockyards Administration at Washington, D. C., as soon as practicable, true copies of all contracts, or changes therein, between such stockyard owner and packing, rendering, serum, fertilizer, and other establishments relating to the stockyards of such owner, except when it is shown that copies of such documents in the form in which they are effective are already in the possession of the United States Government at Washington and available to the Secretary.

8. In addition to other necessary records an accurate record of number of head of each class of live stock received, shipped, and disposed of locally each day shall be kept by each stockyard owner.

9. Each stockyard owner and registrant shall report in writing to the Packers and Stockyards Administration at Washington, D. C., within ten days thereafter any change of name or address or in the management or nature, or in the substantial control or ownership, of the business of such stockyard owner or registrant under the act.

10. No stockyard owner or registrant shall destroy or dispose of any books, records, documents, or papers which contain or explain or modify transactions in his business under the act, without the consent in writing of the officer in charge of the Packers and Stockyards Administration at Washington, D. C.

11. A stockyard owner or registrant shall not knowingly make, issue, or circulate any false or misleading report, record, or representation concerning livestock market conditions or the price or sale of any live stock.

12. If any market agency shall knowingly sell or dispose of livestock consigned to it to any person in whose business such market agency, or any stockholder, owner, officer, or salesman, thereof, has a pecuniary interest, such market agency shall promptly disclose such fact in accounting to the owner or consignor of such live stock.

13. Whenever feed or water is furnished to livestock at stockyards by or at the direction of stockyard owners or market agencies they shall see that it is wholesome and fit for the purpose. They shall collect for feed so furnished according to actual or carefully estimated weight only and in accordance with their schedules of rates and charges filed under the Act.

14. Every stockyard owner or market agency that furnishes weighing facilities at stockyards shall maintain and operate such facilities so as to insure accurate weights.

15. A stockyard owner shall not discriminate unfairly with respect to the utilization of pens, alleys, or buildings for the yarding or handling of live stock, or of space for packing, rendering, and other establishments, or otherwise in the services and facilities of his stockyards.

16. Each stockyard owner and registrant shall exercise reasonable care and promptness in respect to yarding, feeding, watering, weighing, or otherwise handling livestock to prevent waste of feed or shrinkage, injury, death, or other avoidable loss.

17. (a) Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver

to the owner or consignor of the livestock a true written account of such sale, showing the number, weight, and price of each kind of animals sold, the name of the purchaser, the date of sale, and such other facts as may be necessary to complete the account.¹

(b) Every market agency and dealer shall execute and maintain or cause to be executed and maintained reasonable bonds to suitable trustees to secure the performance of their obligations incurred as such market agency or dealer. For the purposes of this regulation "market agency" means any person engaged in the business of buying or selling in commerce livestock at a stockyard on a commission basis, and "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

Such bonds may contain such other terms and conditions as may be agreed upon between the parties thereto, not inconsistent with the requirements of this regulation. The surety on any such bond shall be a surety company approved by the Treasury Department of the United States for bonds executed to the United States, or any other form of bond may be accepted in lieu thereof, which is found by the officer in charge of the Packers and Stockyards Administra-

¹ Paragraph (a) was the original regulation 17, issued November 30, 1921. It was amended by adding paragraphs (b) and (c), effective September 1, 1923; and paragraph (b) was replaced by the present paragraph (b), effective November 1, 1924. See Appendices 2 and 3.

tion at Washington, D. C., to afford substantially equivalent protection.

The amount of such bond shall be not less than the nearest multiple of \$1,000 above the largest amount of the sales and/or purchases of livestock by such market agency or dealer on any one day, or above the average amount of such sales and/or purchases during two business days, as the market agency or dealer may elect, based on the total number of the business days and the total amount of such sales and/or purchases in the preceding twelve months or part thereof in which such market agency or dealer did business, if any. In any case, however, the amount shall be not less than \$1,000, and when the sales and/or purchases calculated as hereinbefore specified exceed \$50,000 the amount of the bond need not exceed \$50,000 plus 10 per cent of the excess. Whenever in the judgment of the officer in charge of the Packers and Stockyards Administration at Washington, D. C., the condition of the business of any market agency or dealer is such as to render his bond inadequate, such bond, upon notice, shall be increased or readjusted accordingly.

In case two or more dealers are the employees or agents solely of the same principal they shall be covered by a single bond in an amount based on their combined purchases and/or sales determined in accordance with this regulation, and in any other case two or more market agencies or dealers may be covered by a single bond.

If any such bond contains a provision for termination by any party thereto before the expiration of the

term, if any, specified in the bond, such provision shall require that notice in writing of such termination be filed, on or before the 10th day preceding the date of such termination, with the Packers and Stockyards Administration at Washington, D. C., by the party terminating the bond.

When the bond required by this regulation is executed, the market agency or dealer shall file or cause to be filed with the Packers and Stockyards Administration at Washington, D. C., a fully executed duplicate of such bonds.

(c) No market agency shall make such use or disposition of funds in its possession or control as will endanger or impair the faithful and prompt accounting for and payment of such portion thereof as may be due the owner or consignor of livestock or other person having an interest therein and to this end shall so handle all such funds as to prevent their being intermingled or confused with other accounts or funds of the market agency kept or used for other purposes.

18. The officer in charge of the Packers and Stockyards Administration at Washington, D. C., shall perform for and under the supervision of the Secretary of Agriculture such duties as he may require in enforcing the act and these rules and regulations.

[PUBLIC, No. 51—67TH CONGRESS]

[H. R. 6320]

AN ACT To regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—DEFINITIONS

This act may be cited as the “Packers and Stockyards Act, 1921.”

SEC. 2. (a) When used in this Act—

(1) The term “person” includes individuals, partnerships, corporations, and associations;

(2) The term “Secretary” means the Secretary of Agriculture;

(3) The term “meat food products” means all products and by-products of the slaughtering and meat-packing industry—if edible;

(4) The term “livestock” means cattle, sheep, swine, horses, mules, or goats—whether live or dead;

(5) The term “livestock products” means all products and by-products (other than meats and meat food products) of the slaughtering and meat-packing industry derived in whole or in part from livestock; and

(6) The term “commerce” means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or

possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(b) For the purpose of this Act (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of livestock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

TITLE II.—PACKERS

SEC. 201. When used in this Act—

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above; or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

SEC. 202. It shall be unlawful for any packer to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer, any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e).

SEC. 203. (a) Whenever the Secretary has reason to believe that any packer has violated or is violating any provisions of this title, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing the Secretary may amend the complaint; but in case of any amendment adding new

charges the hearing shall, on the request of the packer, be adjourned for a period not exceeding fifteen days.

(b) If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this title covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture.

(c) Until a transcript of the record in such hearing has been filed in a circuit court of appeals of the United States, as provided in section 204, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer to be heard, may amend or set aside the report or order, in whole or in part.

(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

SEC. 204. (a) An order made under section 203 shall be final and conclusive unless within thirty days after service the packer appeals to the circuit court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer will pay the costs of the proceedings if the court so directs.

(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the com-

plaint, the evidence, and the report and order. If before such transcript is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) At any time after such transcript is filed the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) The evidence so taken or admitted, duly certified and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way.

(e) The court may affirm, modify, or set aside the order of the Secretary.

(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

(g) If the circuit court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) The circuit court of appeals shall have exclusive jurisdiction to review, and to affirm, set aside,

or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 240 of the Judicial Code, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the circuit court of appeals, in so far as such decree operates as an injunction, unless so ordered by the Supreme Court.

(i) For the purposes of this title the term "circuit court of appeals," in case the principal place of business of the packer is in the District of Columbia, means the Court of Appeals of the District of Columbia.

SEC. 205. Any packer, or any officer, director, agent, or employee of a packer, who fails to obey any order of the Secretary issued under the provisions of section 203, or such order as modified—

(1) After the expiration of the time allowed for filing a petition in the circuit court of appeals to set aside or modify such order, if no such petition has been filed within such time; or

(2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the circuit court of appeals and no such writ has been applied for within such time; or

(3) After such order, or such order as modified, has been sustained by the courts as provided in section 204: shall on conviction be fined not less than \$500 nor more than \$10,000, or imprisoned for not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense.

TITLE III.—STOCKYARDS

SEC. 301. When used in this Act—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock:

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

SEC. 302. (a) When used in this title the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. This title shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of this title until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition.

SEC. 303. After the expiration of thirty days after the Secretary has given public notice that any stock-

yard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged and the kinds of stockyard services, if any, which he furnishes at such stockyard. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard.

SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

SEC. 306. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or de-

termine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may either upon complaint or upon his own initiative without complaint, at once, and, if he so orders, without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing,

whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing can not be concluded within the period of suspension, the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on a patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than \$500 for each such offense, and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on con-

viction be fined not more than \$1,000, or imprisoned not more than one year, or both.

SEC. 307. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful.

SEC. 308. (a) If any stockyard owner, market agency, or dealer violates any of the provisions of sections 304, 305, 306, or 307, or of any order of the Secretary made under this title, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 309, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.

SEC. 309. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the "defendant") in violation of the provisions of sections 304, 305, 306, or 307, or of an order of the Secretary made under this title, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the de-

fendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the livestock commissioner, board of agriculture, or other agency of a State or Territory having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of this title, or concerning which any question may arise under any of the provisions of this title, or relating to the enforcement of any of the provisions of this title. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides

or in which is located the principal place of business of the defendant, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may

be; and (3) shall conform to and observe the regulation or practice so prescribed.

SEC. 311. Whenever in any investigation under the provisions of this title, or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden, and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

SEC. 312. (a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce at a stockyard, of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision

(a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist.

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

SEC. 314. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 310, 311, or 312 shall forfeit to the United States the sum of \$500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper

process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

TITLE IV.—GENERAL PROVISIONS

SEC. 401. Every packer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than \$5,000, or imprisoned not more than three years, or both.

SEC. 402. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 6, 8, 9, and 10 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this Act and to any person subject to the provisions of this Act,

whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this Act in any part of the United States.

SEC. 403. When construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any packer, stockyard owner, market agency, or dealer, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such packer, stockyard owner, market agency, or dealer, as well as that of such agent, officer, or other person.

SEC. 404. The Secretary may report any violation of this Act to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

SEC. 405. Nothing contained in this Act, except as otherwise provided herein, shall be construed—

(a) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, the Interstate Commerce Act as amended, the Act entitled "An Act to promote export trade, and for other purposes," approved April 10, 1918, or sections 73 to 77, inclusive, of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended by the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913, or

(b) To alter, modify, or repeal such Acts or any part or parts thereof, or

(c) To prevent or interfere with any investigation, proceeding, or prosecution begun and pending at the time this Act become effective.

SEC. 406. (a) Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission.

(b) On and after the enactment of this Act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this Act, complaint has been served under section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes," approved September 26, 1914, or under section 11 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case.

SEC. 407. The Secretary may make such rule, regulations, and orders as may be necessary to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere,

and as may be appropriated for by Congress, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

SEC. 408. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Approved, August 15, 1921.

Extracts from Federal Trade Commission Act

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

* * * * *

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association, incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-

seven, and all acts amendatory thereof and supplementary thereto.

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

* * * * *

SEC. 6. That the Commission shall also have power—

(a) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission

may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations,

combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

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SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the Commission as he may direct.

SEC. 9. That for the purposes of this Act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to pro-

duce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the Commission or in obedience to the subpoena of the Commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any

transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

APPENDIX 1

[Supreme Court of the United States. Nos. 687 and 691. October term, 1921. T. F. Stafford, et al., appellants, *vs.* Henry C. Wallace, Secretary of Agriculture, and Charles F. Clyne, United States attorney for the Northern District of Illinois. J. E. Burton, et al., appellants, *vs.* Charles F. Clyne, United States attorney for the Northern District of Illinois. Appeals from the United States District Court for the Northern District of Illinois. May 1, 1922.]

These cases involve the constitutionality of the "Packers and Stockyards Act of 1921, approved August 15, 1921," so far as that act provides for the supervision by federal authority of the business of the commission men and of the live-stock dealers in the great stockyards of the country. They are appeals from the orders of the District Court for the Northern District of Illinois refusing to grant interlocutory injunctions as prayed. The bills sought to restrain enforcement of orders of the Secretary of Agriculture in carrying out the act, directed against the appellants in No. 687, as the commission men in the Union Stockyards of Chicago, and against the appellants in No. 691, as dealers in the same yards. The ground upon which the prayers for relief are based is that the Secretary's orders are void, because made under an act invalid as to each class of appellants. The bill in No. 687 makes defendants the Secretary of Agriculture and the United States Attorney for the Northern District of Illinois, averring that the latter is charged with the duty of enforcing the severe penalties imposed by the Act for failure to comply with orders of the Secretary thereunder. The bill in No. 691 makes the United States Attorney the only defendant, with the same averment.

The two bills in substance allege that the Union Stockyards and Transit Company was incorporated by the State of Illinois in 1865, and given authority to acquire, construct, and maintain enclosures, structures and railway lines for the reception, safe-keeping, feeding, watering and for weighing, delivery and transfer of cattle and live stock of every description, and to carry on a public live-stock market with all the necessary appurtenances and facilities; that it is the largest stockyards in the world, and in 1920 handled fifteen million head of live stock of all descriptions, including cattle, calves, hogs and sheep, shipped mainly from outside the State of Illinois; that the live stock are loaded at the point of origin and shipped under a shipping contract which is a straight bill of lading consigning them to the commission merchants at the yard, that on arrival the live stock are at once driven from the cars by the commission merchant, who is the consignee, to the pens assigned by the stockyards company to such merchant for his use, that they are then in the exclusive possession of the commission merchant, are watered and fed by the stockyards company at his request, that with the delivery to the commission merchant, the transportation is completely ended, that all the live stock consigned to commission merchants are sold by them for a commission or brokerage, and not on their own account, that they are sold at the stockyards and nowhere else; that the commissions are fixed at an established rate per head, that the commission men remit to the owners and shippers the proceeds of sale, less their commission and the freight and yard charges paid by them; that the live stock are sold (1) to purchasers who buy the same for slaughter at packing houses, located at the stockyards or adjacent thereto; (2) to purchasers who buy to ship to packing houses outside the State of Illinois for slaughter; (3) to purchasers who buy to feed and fatten the same; and (4) to dealers or traders; that about one-third of all the live stock received are sold to the dealers; that not until after the delivery of the live stock to the commission mer-

chants and the transportation has completely ceased, does the business of the dealers begin; that they do not buy or sell on commission, but buy and sell for cash exclusively for their own profit, that the greater part of live stock received by commission men at the yards are in carload or trainload lots and a substantial part are not graded or conditioned to meet the specific requirements of the buyers, that the dealers after purchase put the live stock in pens assigned to them by the stockyards owner and do the sorting and classification, that the dealers buy in open market in competition with each other, that they pay the expense of the custody, care and feeding and watering the stock while they hold them, that they sell promptly and have nothing to do with the shipment of the live stock they sell from the yards to points outside.

In the bill in No. 691, the appellants aver that they are members of the Chicago Live Stock Exchange and of the National Live Stock Exchange, the members of which are dealers in all the stockyards of the country numbering 2,000, and that they bring their bill for all of them who may choose to join and take the benefit of the litigation.

The chairman of the Committee on Agriculture in reporting to the House of Representatives the bill, which became the act here in question (May 18, 1921, 67th Congress, 1st Session, Report No. 77, to accompany H. R. 6320), referred to the testimony printed in the House Committee Hearings of the 66th Congress, 2nd Session, Committee on Agriculture, Vol. 220-2 and 220-3, as furnishing the contemporaneous history and information of the evils to be remedied upon which the bill was framed.

It appeared from the data before the Committee that for more than two decades, it had been charged that the five great packing establishments of Swift, Armour, Cudahy, Wilson and Morris, called the "Big Five", were engaged in a conspiracy in violation of the Anti-Trust Law, to control the business of the

purchase of the live stock, their preparation for use in meat products, and the distribution and sale thereof in this country and abroad. In 1903, a bill in equity was filed by the United States to enjoin further conduct of this alleged conspiracy, as a violation of the Anti-Trust Law, and an injunction issued. *United States v. Swift*, 122 Fed. Rep. 529. The case was taken on appeal to this Court, which sustained the injunction. *Swift v. United States*, 196 U. S. 375. In 1912, these same defendants or their successors in business, were indicted and tried for such violation of the Anti-Trust Law, and acquitted. (See House Committee Hearings before Committee on Agriculture, 1920, Vol. 220-2. Subject, Meat Packer Legislation, 718.) It further appeared that on February 7, 1917, the President directed the Federal Trade Commission to investigate and report the facts relating to this industry and kindred subjects. The Commission reported that "the Big Five" packing firms, had complete control of the trade from the producer to the consumer, had eliminated competition and that one of the essential means by which this was made possible was their ownership of a controlling part of the stock in the stockyards companies of the country. The Commission stated its conclusions as follows:

"The big packers' control of these markets is much greater than these statistics indicate. In the first place, they are the largest and in some cases practically the only buyers at these various markets and as such, hold a whip hand over the commission men who act as the intermediaries in the sale of live stock.

"The packers' power is increased by the fact that they control all the facilities through which live stock is sold to themselves. Control of stockyards comprehends control of live stock exchange buildings where commission men have their offices; control of assignment of pens to commission men; control of banks and cattle loan companies; control of terminal and switching facilities; control of yardage services and charges; control of weighing facilities; control

of the disposition of dead animals and other profitable yard monopolies; and in most cases control of all packing house and other business sites. Packer owned stockyards give these interests access to records containing confidential shipping information which is used to the disadvantage of shippers who have attempted to forward their live stock to a second market." Summary of Report of the Federal Trade Commission on Meat Packing Industry, July 3, 1918.

Following the Report of the Federal Trade Commission, and before the passage of this act, a bill in equity for injunction was filed in 1920, in the Supreme Court of the District of Columbia, in which, on February 27th of that year, was entered a decree against the same Big Five packers consented to by them, with the saving clause that it should not be considered as an admission that they had been guilty of violations of law. The decree enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of live stock, and the sale and distribution of meat products and of many by-products in preparation of meats and in unrelated lines, not here relevant, and from continuing to own or control, directly or indirectly, any interest in any public stockyard market company in the United States, or in any stockyard market journal, or in any stockyard terminal railroad or in any public cold storage warehouse. (House Committee Hearings Committee on Agriculture, 1920, Vol. 220-2, page 720, "Meat Packer Legislation.")

It appears from these Committee hearings that the dealers do not buy fat cattle generally or largely compete with packers in such purchases. They buy either the thin cattle known as "stockers and feeders," which they dispose of to farmers and stock-feeders, to be taken to the country for farm use and fattening, or they buy mixed lots and cull out of them the fat cattle. These they dispose of to packers either directly or through commission men. The

proportion of all the hogs passing through the yards in 1919 handled by these traders, speculators or scalpers, as they are indifferently called, was 30 per cent. Of all the butcher cattle they handled 20 per cent., of the beef cattle 10 per cent., and of "the stockers and feeders" 80 per cent. At Kansas City, this last figure was higher, reaching 95 per cent. (Committee Hearings, p. 2140.)

It was conceded that of all the live stock coming into the Chicago stockyards and going out, only a small percentage, less than 10 per cent., is shipped from or to Illinois.

The complaints of the shippers of live stock against the charges and practices, working to their prejudice in the conduct of the stockyards, the commission men and the dealers, were, first, suppression of competition in purchases through agreement by which one packer would buy a car load or train load of cattle and turn over half of it to the only other packer buying in the local market. Second, "wiring on." A shipper would send a car load or train load of stock to one stockyard. Finding the market unsatisfactory, he would ship them further east. The packers' agents were promptly advised at the second stockyards and controlling the price there, they made it the same as at the first stockyards, through the shipper had paid the freight and had to stand the "shrink" of the cattle from the journey. Third, the charges in the stockyards for hay and other facilities were excessive. Fourth, the duplication of commissions through the collusion of the commission men and the dealers, by which commission men would sell at a lower price to dealers than to outside buyers and drive the latter to buying from dealers through commission men, forcing two commissions. Fifth, the monopoly conferred by the stockyards owner on a company in which packers were largely interested, of buying at a fixed price of \$5.00 a head all dead cattle for rendering purposes, when they were worth more. Sixth, the frequency with which commission men reported to shippers that live stock had been

crippled and had to be sold in that condition at a lower price, arousing suspicion as to the fact and if it was a fact, as to the cause of the crippling. (Pages 22, 23, 24, also 466, *et seq.*, 1086; 2125, 2244, *et seq.* Committee of House Hearings—Committee on Agriculture, Vols. 220-2, 66th Congress, 2nd Session.)

Mr. Chief Justice TAFT, after making the foregoing statement of the case, delivered the opinion of the court.

Section 316 of the packers and stockyards act of 1921 makes applicable to suits for injunction against the orders of the Secretary of Agriculture, the same procedure, original and appellate, provided in the Act of October 22, 1913 (38 Stat. 208, 219, 220), for suits for injunction against the orders of the Interstate Commerce Commission. The latter act gives a right to a direct appeal to this court from the granting or refusing an interlocutory injunction. Hence the appeals herein are properly prosecuted.

In each bill the averments are sufficient, if the act be invalid, to show equitable grounds for injunction in the severe penalties incurred for failure to comply with the act before opportunity can be given to test its validity. *Ex parte Young*, 209 U. S. 123.

We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees of Agriculture in Congress, but only to enable us to consider and discuss the act whose validity is here in question in the light of the environment in which Congress passed it. It was for Congress to decide from its general information and from such special evidence as was brought before it, the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under

which Congress acted. *Chicago Board of Trade v. United States*, 246 U. S. 231, 238; *Danciger v. Cooley*, 248 U. S. 319, 322.

The packers and stockyards act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. It constitutes the Secretary of Agriculture a tribunal to hear complaints and make findings thereon, and to order the packers to cease any forbidden practice. An appeal is given to the circuit court of appeals from these findings and orders. They are to be enforced by the district court by penalty if not appealed from and if disobeyed. Title III concerns the stockyards and provides for the supervision and control of the facilities furnished therein in connection with the receipt, purchase, sale on commission basis or otherwise, of live stock and its care, shipment, weighing or handling in interstate commerce. A stockyard is defined to be a place conducted for profit as a public market, with pens in which live stock are received and kept for sale or shipment in interstate commerce. Yards with a superficial area less than 20,000 square feet are not within the Act. Stockyard owners, commission men and dealers are recognized and defined and the two latter are required to register. The act requires that all rates and charges for services and facilities in the stockyards and all practices in connection with the live stock passing through the yards shall be just, reasonable, non-discriminatory and non-deceptive, and that a schedule of such charges shall be kept open for public inspection and only be changed after ten days notice to the Secretary of Agriculture, who is made a tribunal to inquire as to the justice, reasonableness and non-discriminatory or non-deceptive character of every charge and practice, and to order that it cease, if found to offend, with the same pro-

visions for appeal and enforcement in court as in the case of offending packers. The Secretary is given power to make rules and regulations to carry out the provisions, to fix rates or a minimum or maximum thereof and to prescribe how every packer, stockyard owner, commission man and dealer shall keep accounts.

The bills aver that the Secretary has given the notice which requires appellants to register and has announced proposed rules and regulations, prescribing the form of rate schedules, the required reports, including daily accounts of receipts, sales and shipments, forbidding misleading reports to depress or enhance prices, prescribing proper feed and care of live stock, and forbidding a commission man to sell live stock to another in whose business he is interested, without disclosing such interest to his principal.

The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the act, was exorbitant charges, duplication of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possible by collusion between the stockyards management, and the commission men on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the

stockyards necessarily reduce the price received by the shipper, and increase the price to be paid by the consumer. If they be exorbitant or unreasonable, they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination that unduly and directly enhances them is an unjust obstruction to that commerce. The shipper whose live stock are being cared for and sold in the stockyards market is ordinarily not present at the sale, but is far away in the west. He is wholly dependent on the commission men. The packers and their agents and the dealers who are the buyers, are at the elbow of the commission men, and their relations are constant and close. The control that the packers have had in the stockyards by reason of ownership and constant use, the relation of landlord and tenant between the stockyards owner, on the one hand, and the commission men and the dealers, on the other, the power of assignment of pens and other facilities by that owner to commission men and dealers, all create a situation full of opportunity and temptation to the prejudice of the absent shipper and owner in the neglect of the livestock, in the *mala fides* of the sale, in the exorbitant prices obtained, in the unreasonableness of the charges for services rendered.

The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions can not be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are

essential to the sales to the stock farmers and feeders. The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity. The origin of the live stock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.

The Act, therefore, treats the various stockyards of the country as great National public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn v. Illinois*, 94 U. S. 113. Nor is there any doubt that in the receipt of live stock by rail and in their delivery by rail the stockyards are an interstate commerce agency. *United States v. Union Stock Yards Co.*, 226 U. S. 286. The only question here is whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation. A similar question has been before this court and had great consideration in *Swift v. United States*, 196 U. S. 375. The judgment in that case gives a clear and comprehensive exposition which leaves to us in this case little but the obvious application of the principles there declared.

The *Swift* case presented to this court the sufficiency of a bill in equity brought against substantially

the same packing firms as those against whom this legislation is chiefly directed, charging them as a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live stock markets of the different States, to bid up prices for a few days in order to induce the cattle men to send their stock to the stockyards, to fix prices at which they would sell, and to that end to restrict shipments of meat when necessary, to establish a uniform credit to dealers, and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads to the exclusion of competitors, and all this in a conspiracy and single connected scheme to monopolize the supply and distribution of fresh meats throughout the United States. In holding the bill good, this court said (p. 396) :

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. . . . It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful. *Aikens v. Wisconsin*, 196 U. S. 194, 206. The statute gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt."

Again (p. 396 and 397) :

"Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote or merely probable. . . . Here the subject matter is sales and the very point of the combination is to restrain and monopolize commerce among the states in respect of such sales."

Again (p. 398 and 399), in answer to the objection that what was charged did not constitute a case involving commerce among the States, the court said:

"Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle" . . .

The application of the commerce clause of the Constitution in the *Swift* case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

The principles of the *Swift* case have become a fixed rule of this court in the construction and application of the commerce clause. Its latest expression on the subject is found in *Lemke v. Farmers' Grain Co.*, decided at this term, February 27, 1922. In that case it was held, on the authority of the

Swift case, that the delivery and sale of wheat by farmers to local grain elevators in North Dakota to be shipped to Minneapolis, when practically all the wheat purchased by such elevators was so shipped and the price was fixed by that in the Minneapolis market less profit and freight constituted a course of business and determined the interstate character of the transaction. Accordingly a State statute which sought to regulate the price and profit of such sales and was found to interfere with the free flow of interstate commerce, was declared invalid as a violation of the commerce clause. Similar confirmation of the principle of the *Swift* case is to be found in *Dahnke v. Bondurant*, in *Eureka Pipe Line v. Hallanan*, and in *U. S. Fuel Co. v. Hallanan*, all decided December 12, 1921; in *Western Union Co. v. Foster*, 247 U. S. 105, 113, in *United States v. Reading*, 226 U. S. 324, 367, 368; *Ohio R. R. Co. v. Worthington*, 225 U. S. 101, 108; *Loewe v. Lawler*, 208 U. S. 274, 301.

It is manifest that Congress framed the packers and stockyards act in keeping with the principles announced and applied in the opinion in the *Swift* case. The recital in sec. 2, par. b of Title I of the act quoted in the margin leaves no doubt of this.¹ The act deals with the same current of business, and the same practical conception of interstate commerce.

Of course, what we are considering here is not a bill in equity or an indictment charging conspiracy

¹ The first title, sec. 2, paragraph b, provides that "for the purpose of this act a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live stock and meat packing industries whereby live stock and its products are sent from one state with the expectation that they will end their transit after purchase in another, including, in addition to cases within the general description, all cases whose purchase or sale is either for shipment to another state, or for slaughter of the live stock within the state and the shipment outside of the state of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of the act."

to obstruct interstate commerce, but a law. The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the anti-trust law as in the *Swift* case, certainly it may provide regulation to prevent their formation. The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the *Swift* indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent.

In *United States v. Ferger, et al.*, 250 U. S. 199, the validity of an act of Congress punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce was in question. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the act, this court, speaking through Chief Justice White, answered the objection by saying:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt

with, instead of by relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained, it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to an influence upon interstate commerce come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The transportation act of 1920 presents a close analogy to this case. It authorizes supervision by the Interstate Commerce Commission of intrastate commerce where it is so carried on as to work undue, unreasonable advantage or preference in favor of persons or localities in intrastate commerce, as against those in interstate commerce, or any undue, unjust or unreasonable discrimination against interstate commerce itself. *Railroad Commission v. Chicago, Burlington & Quincy Railroad Company*, decided February 27, 1922. That case followed the *Minnesota Rate Cases*, 230 U. S. 352, 432, 433, the *Shreveport case*, 234 U. S. 342, 351; *Illinois Central R. R. Co. v. Public Utilities Commission*, 245 U. S. 493; *B. & O. Ry Co. v. Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Ry. Co. v. United States*, 222 U. S. 20, 26, 27; *Second Employers Liability Case*, 223 U. S. 1, 48, 51. The principle of these cases is thus clearly stated by the court in *Minnesota Rate Cases* (p. 399) :

"The authority of Congress extends to every part of interstate commerce and to every instrumentality and agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to

regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the National power within its appointed sphere."

In section 311 of the act quoted in the margin,² Congress gives to the Secretary of Agriculture in respect to intrastate transactions that affect prejudicially interstate commerce under his protection, the same powers given to the Interstate Commerce Commission in respect to intrastate commerce which affects prejudicially interstate railroad commerce in paragraph 4, section 13 as amended in section 416 of the transportation act of 1920. This was the paragraph and section which were enforced in *Railroad Commission v. Chicago, Burlington & Quincy Railroad Company*, *supra*, and the validity of which was upheld by this court.

Counsel for appellants cite cases to show that transactions like those of the commission men or dealers

² Section 311 is as follows:

"Whenever in any investigation under the provisions of this title or in any investigation instituted by petition of the stockyard owner or market agency concerned which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation or practice of any stockyard owner or market agency for or in connection with the buying, or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing or handling, not in commerce, of live stock, causes any undue or unreasonable advantage, or preference as between persons or localities in intrastate commerce in live stock on the one hand, and interstate or foreign commerce in live stock, on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation or practice thereafter to be observed in such manner as in his judgment will remove such advantage, preference, or discrimination. Such rates, charges, regulations or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any state or the decision of any state authority to the contrary notwithstanding."

here are not interstate commerce or within the power of Congress to regulate. The chief of these are *Hopkins v. United States*, 171 U. S. 604, and *Anderson v. United States*, 171 U. S. 604. These cases were considered in the *Swift* case and disposed of by the Court as follows (p. 397) :

“So again, the line is distinct between this case and *Hopkins v. United States*, 171 U. S. 578. All that was decided there was that the local business of commission merchants was not commerce among the States even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnish facilities for sales. Therefore there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges, was left open. In *Anderson v. United States*, 171 U. S. 604, the defendants were buyers and sellers at the stockyards but their agreement was merely not to employ brokers, or to recognize yard traders who were not members of their association. Any yard trader could become a member of the association on complying with the conditions and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the States and being formed with a different intent, was not within the act. The present case is more like *Montague & Co. v. Lowry*, 193 U. S. 38.”

It is clear from this that if the bill in the *Swift* case had averred that control of the stockyards and the commission men was one of the means used by the packers to make arbitrary prices in their plan of monopolizing the interstate commerce, the acts of the stockyards owners and commission men would have been regarded as directly affecting interstate commerce and within the anti-trust act. Congress has found as an evil to be apprehended and to be prevented by the act here in question, in the use and

control of stockyards and the commission men to promote a packers' monopoly of interstate commerce. The act finds and imports this injurious direct effect of such agencies upon interstate commerce just as the intent of the conspiracy charged in the indictment in the *Swift* case tied together the parts of the scheme there attacked and imported their direct effect upon interstate commerce.

Again, if the result of the combination of commission men in the *Hopkins* case had been to impose exorbitant charges on the passage of the live stock through the stockyards from one State to another, the case would have been different, as the court suggests. The effect on interstate commerce in such a case would have been direct. Similarly in the *Anderson* case if the combination of dealers had been directed to collusion with the commission men to secure sales at unduly low prices to the dealers and to double commissions, or to practice any other fraud or oppression calculated to decrease the price received by the shipper and increase the price to the purchaser in the passage of live stock through the stockyards in interstate commerce, this would have been a direct burden on such commerce and within the anti-trust act.

The other cases relied on by appellants are less relevant to this discussion than the *Anderson* and *Hopkins* cases. Some of them are tax cases. As to them it is well to bear in mind the words of the court in the *Swift* case (p. 400) :

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress where such interference is deemed necessary for the protection of commerce among the states."

Thus take the case of *Bacon v. Illinois*, 227 U. S. 504. Bacon had purchased grain in transit from a western State to the east. He exercised the power under his contract to stop the grain in Illinois and

put it in a grain elevator there. He intended to send it on to some other State for sale. He might have changed his mind. He did, however, after a time, send it out of the State. The grain was taxed while it was in Illinois. The question was whether it was immune from taxation because in transit in interstate commerce. Following the cases of *Woodruff v. Parham*, 8 Wall. 123; *Coe v. Errol*, 116 U. S. 517; *Brown v. Houston*, 114 U. S. 622; *Pittsburg & Southern Coal Company v. Bates*, 156 U. S. 577; *Diamond Match Co. v. Ontonagon*, 188 U. S. 82, 93, 96; *Kelley v. Rhodes*, 188 U. S. 1, 5, 7; *General Oil Co. v. Crain*, 209 U. S. 211; and *American Steel and Wire Co. v. Speed*, 192 U. S. 500, it was held that property in a State which its owner intends to transport to some other State, but which is not in actual transit and in respect to the disposition of which he may change his mind is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the State where it is. The Court brought out the distinction between such cases and this in the remark (p. 516):

"The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

Moreover, it will be noted that even in tax cases where the tax is directed against a commodity in an actual flowing and constant stream out of a State from which the owner may withdraw part of it for use or sale in the State before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the State may not impose because such flow in interstate commerce is an established course of business. *United Fuel Gas Co. v. Hallanan*, decided December 12, 1921. *The Eureka Pipe Line Company v. Hallanan et al.*, decided December 12, 1921. In the former, the Court summed up as follows:

"In short, the great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff as owner of the gas, and the purchasers after they receive it might change their minds before the gas leaves the state and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the state line. *Ohio R. R. Commission v. Worthington*, 225 U. S. 101, 108. *United States v. Reading Co.*, 226 U. S. 324, 367; *Western Union Telegraph Co. v. Foster*, 247 U. S. 105, 113."

The case of *Blumenstock v. Curtis*, 252 U. S. 436, is easily distinguished from the one at the bar. There it was merely held that an attempt of a publisher to monopolize the business of publishing advertising matter in magazines resulting in refusal of such publisher to accept advertisements in his magazines was too remote in its relation to the interstate commerce of circulating magazines." The Court said:

"This case is wholly unlike *International Text Book v. Pigg*, 217 U. S. 91, wherein there was a continuous interstate traffic in textbooks and apparatus for a course of study pursued by means of correspondence, and the movements in interstate commerce were held to bring the subject matter within the domain of federal control and to exempt it from the burden imposed by state legislation."

Pennsylvania R. R. Co. v. Knight, 192 U. S. 21, relied on by counsel for appellants and said to be ex-

actly applicable to the case at bar was an effort by the Pennsylvania Railroad Company to secure immunity from city regulation for a cab system which it ran in New York to and from its station to points in New York City, on the ground that it was part of interstate commerce. This court held that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce. The case was distinguished in the *Swift* case (p. 401) from cartage for delivery of the goods when part of the contemplated transit. There is nothing in the case to indicate that if such an agency could be and were used in a conspiracy unduly and constantly to monopolize interstate passenger traffic, it might not be brought within federal restraint.

As already noted, the word "commerce" when used in the act is defined to be interstate and foreign commerce. Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within Congressional power and valid.

Other objections are made to the act and its provisions as violative of other limitations of the Constitution but the only one seriously pressed was that based on the commerce clause and we do not deem it necessary to discuss the others.

The orders of the district court refusing the interlocutory injunctions are

Affirmed.

Mr. Justice McREYNOLDS dissents.

Mr. Justice DAY did not sit in these cases and took no part in their decision.

APPENDIX 2

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

Amendment No. 1 to Circular 156

Amendment to General Rules and Regulations of the Secretary of Agriculture with respect to stockyard owners, market agencies, and dealers.

By virtue of the authority vested in the Secretary of Agriculture by the packers and stockyards act, 1921, approved August 15, 1921, Public No. 51, Sixty-seventh Congress, I, Henry C. Wallace, Secretary of Agriculture, do make, prescribe, and give public notice of an amendment as hereinafter set forth to the general rules and regulations of the Secretary of Agriculture with respect to stockyard owners, market agencies, and dealers, which were issued on November 30, 1921, under said Act.

Effective on and after September 1, 1923, amend regulation 17 so as to read as follows:

(a) Each market agency shall, before the close of the next business day following the sale of any live stock consigned to it for sale, transmit or deliver to the owner or consignor of the live stock a true written account of such sale, showing the number, weight, and price of each kind of animals sold, the name of the purchaser, the date of sale, and such other facts as may be necessary to complete the account.

(b) Each market agency engaged in the business of selling live stock on a commission basis shall execute and maintain a good and sufficient bond to a suitable trustee or trustees. The surety on such bond shall be a surety company authorized to do such business and subject to service of process in suits brought in the State where the market agency is located. The surety company shall be one of those approved by the Treasury Department of the United States for bonds executed to the United States. Such bond shall be conditioned to secure to the owner or consignor the faithful and prompt accounting for and payment of the proceeds of sales of live stock received for sale by such market agency for or on account of such owner or consignor. The amount of such bond shall be not less than the nearest multiple of \$2,500 above the average amount of the gross proceeds of sale of live stock handled by such market agency in its capacity as such during two business days, based on the total number of business days and the total amount of the gross proceeds of sale of live stock so handled in the preceding 12 months or part thereof in which such market agency did business, if any. In any case, however, the amount shall be not less than \$5,000 and need not exceed \$50,000. Such bond may contain such other terms and conditions as may be agreed upon between the market agency and the surety company, but shall not be inconsistent with the requirements of these regulations and the Packers and Stockyards Act, 1921. When executed the market agency shall file with the Packers and Stockyards Administration a true copy of such bond, certified as such by the surety company. If any such bond shall contain a provision for termination by any party thereto before the expiration of the term, if any, specified in the bond, such provision shall require that notice of such termination be filed on or before the date thereof with the Packers and Stockyards Administration at Washington, D. C., by the party terminating the bond. If found by the officer in charge of the Packers and Stockyards Admin-

istration to be satisfactory, any other form or plan of bond, guaranty, or indemnity which will afford protection substantially equivalent to or consistent with that required by this regulation may be accepted as a substitute in whole or in part for the bond required by this regulation.

Should the volume of business transacted by any market agency become such as to render its bond inadequate to meet the requirements of this regulation, such bond shall be readjusted so as to meet these requirements at or before the end of any year subsequent to its execution.

(c) No market agency shall make such use or disposition of funds in its possession or control as will endanger or impair the faithful and prompt accounting for and payment of such portion thereof as may be due the owner or consignor of live stock or other person having an interest therein and to this end shall so handle all such funds as to prevent their being intermingled or confused with other accounts or funds of the market agency kept or used for other purposes.



In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington this 14th day of June, 1923.

HENRY C. WALLACE,
Secretary of Agriculture.



APPENDIX 3

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C.

Amendment No. 2 to Circular 156

Amendment to General Rules and Regulations of the Secretary of Agriculture with respect to stockyard owners, market agencies, and dealers.

By virtue of the authority vested in the Secretary of Agriculture by the Packers and Stockyards Act, 1921, approved August 15, 1921, 42 Statutes at Large, page 159, and the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1925, and for other purposes," Public No. 201, Sixty-eighth Congress, I, Henry C. Wallace, Secretary of Agriculture, do make, prescribe, and give public notice of an amendment, as hereinafter set forth, to the general rules and regulations of the Secretary of Agriculture with respect to stockyard owners, market agencies, and dealers, which were issued under said Packers and Stockyards Act, 1921, on November 30, 1921, as amended on June 14, 1923, by Amendment No. 1 to Circular 156.

Effective on and after November 1, 1924, amend subdivision (b) of regulation 17 so as to read as follows:

(b) Every market agency and dealer shall execute and maintain or cause to be executed and maintained reasonable bonds to suitable trustees to secure the performance of their obligations incurred as such market agency or dealer. For the purposes of this regulation "market agency" means any person engaged in the business of buying or selling in commerce livestock at a stockyard on a commission basis, and "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

Such bonds may contain such other terms and conditions as may be agreed upon between the parties thereto, not inconsistent with the requirements of this regulation. The surety on any such bond shall be a surety company approved by the Treasury Department of the United States for bonds executed to the United States, or any other form of bond may be accepted in lieu thereof, which is found by the officer in charge of the Packers and Stockyards Administration at Washington, D. C., to afford substantially equivalent protection.

The amount of such bond shall be not less than the nearest multiple of \$1,000 above the largest amount of the sales and/or purchases of livestock by such market agency or dealer on any one day, or above the average amount of such sales and/or purchases during two business days, as the market agency or dealer may elect, based on the total number of the business days and the total amount of such sales and/or purchases in the preceding twelve months or part thereof in which such market agency or dealer did business, if any. In any case, however, the amount shall be not less than \$1,000, and when the sales and/or purchases calculated as hereinbefore specified exceed

\$50,000 the amount of the bond need not exceed \$50,000 plus 10 per cent of the excess. Whenever in the judgment of the officer in charge of the Packers and Stockyards Administration at Washington, D. C., the condition of the business of any market agency or dealer is such as to render his bond inadequate, such bond, upon notice, shall be increased or re-adjusted accordingly.

In case two or more dealers are the employees or agents solely of the same principal they shall be covered by a single bond in an amount based on their combined purchases and/or sales determined in accordance with this regulation, and in any other case two or more market agencies or dealers may be covered by a single bond.

If any such bond contains a provision for termination by any party thereto before the expiration of the term, if any, specified in the bond, such provision shall require that notice in writing of such termination be filed, on or before the 10th day preceding the date of such termination, with the Packers and Stockyards Administration at Washington, D. C., by the party terminating the bond.

When the bond required by this regulation is executed, the market agency or dealer shall file or cause to be filed with the Packers and Stockyards Administration at Washington, D. C., a fully executed duplicate of such bond.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington this 23d day of September, 1924.



HENRY C. WALLACE,
Secretary of Agriculture.



APPENDIX 4

An Act of Congress approved June 5, 1924, (43 Stat. L. 460) entitled "An Act Making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1925, and for other purposes" contains the following provision:

ENFORCEMENT OF PACKERS AND STOCKYARDS ACT

To enable the Secretary of Agriculture to carry into effect the provisions of the Packers and Stockyards Act, approved August 15, 1921, \$452,540: *Provided*, That the Secretary of Agriculture may require reasonable bonds from every market agency and dealer under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing the Secretary finds any registrant is insolvent or has violated any provision of said Act, he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary of Agriculture or a court of competent jurisdiction.

(73)



